



Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
Tricia Ralph

REVIEW REPORT 22-07

February 15, 2022

Municipality of the District of St. Mary's

Summary: The applicant requested the salaries of all employees working for the Municipality of the District of St. Mary's (Municipality). The Municipality withheld the responsive records, citing s. 480 (personal information) of the *Municipal Government Act (MGA)*. The Commissioner finds that releasing the requested information would not be an unreasonable invasion of a third party's privacy and recommends its disclosure. In addition, the Municipality did not provide representations on this matter and indicated it would be highly unlikely that it would agree to release the information regardless of the outcome of the Commissioner's review. This disregard for the recommendation-making model demonstrates why amendments to the legislation are so desperately required. As such, a copy of this report will be provided to the Minister of Justice with a request that he put forward a comprehensive bill to amend *Part XX* the *MGA* and its related Acts to include a provision giving the Information and Privacy Commissioner order-making power.

INTRODUCTION:

[1] The applicant submitted a request for information under s. 466 of *Part XX* of the *Municipal Government Act (MGA)*. Specifically, the applicant requested:

“A copy of the record for the current individual salary for each municipal employee for the District of St. Mary's. (not salary range)”

[2] Instead, the Municipality provided the applicant with a list of position titles and salary ranges or hourly rates for each position. It also provided the total yearly salary budgeted for the Municipality.

[3] The record provided to this office by the Municipality consists of a single table on one page that lists the names and salaries for the Municipality's employees at the time of the access to information request. It was withheld in full from the applicant under s. 480 of the *MGA*.

ISSUE:

[4] Was the Municipality required to refuse access to information under s. 480 of the *MGA* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

DISCUSSION:

Burden of proof

[5] The Municipality bears the burden of proving that the applicant has no right of access to a record or part of a record.¹

[6] Where the Municipality has established that s. 480(1) applies, s. 498(2) shifts the burden to the applicant to demonstrate that the disclosure of third party personal information would not result in an unreasonable invasion of personal privacy.

Was the Municipality required to refuse access to information under s. 480 of the *MGA* because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

[7] Section 480 of the *MGA* provides that a municipality must withhold the personal information of a third party if the disclosure would be an unreasonable invasion of the third party's privacy. For the reasons set out below, I find that release of the requested information would not be an unreasonable invasion of a third party's personal privacy.

[8] It is well established in Nova Scotia that a four-step approach is required when evaluating whether or not s. 480 requires that a municipality refuse to disclose personal information.² The four steps are:

1. Is the requested information "personal information" within s. 461(f)? If not, that is the end. Otherwise, the municipality must go on.
2. Are any of the conditions of s. 480(4) satisfied? If so, that is the end. Otherwise, the municipality must go on.
3. Would the disclosure of the personal information be a presumed unreasonable invasion of privacy pursuant to s. 480(3)?
4. In light of any s. 480(3) presumption, and in light of the burden upon the applicant established by s. 498(2), does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

Applicant's representations

[9] The applicant stated his position that he submitted a reasonable request for information. His interpretation of the *MGA* was that the release of this information would not be an unreasonable invasion of privacy and so should be released. The applicant pointed me to a news article in *The*

¹ *MGA*, s. 498.

² See for example *House (Re)*, [2000] N.S.J. No. 473, [2000 CanLII 20401 \(NS SC\)](#); and *Sutherland v. Dept. of Community Services*, 2013 NSSC 1, [2013 NSSC 1 \(CanLII\)](#).

*Pictou Advocate*³ wherein various municipality staff from several Nova Scotia jurisdictions discussed their public servant salaries publicly. He also pointed me to how the Strait Regional Centre for Education,⁴ which is publicly funded, released every employee's salary for 2017 including expenses.⁵ Finally, he pointed me to the Public Accounts information issued yearly by the Province of Nova Scotia that lists the salaries of government employees that make over \$25,000 annually.⁶ The applicant noted that the information should be public information.

Municipality's representations

[10] The Municipality did not provide any representations during the review process, despite being informed of its burden.

[11] That being said, I do have the benefit of reviewing the Municipality's decision letter to the applicant,⁷ wherein it explained that it thought that providing the applicant with specific salaries of its staff members would constitute an infringement of their personal privacy. In a subsequent letter,⁸ the Municipality also explained to the applicant that it thought disclosure would not be in the public interest. It went on to say that, with regard to the definition of "personal information" in s. 461(f), "...the Act does not require the disclosure of individuals names, but instead 'identifiable individual' (sic)." The Municipality thought that the release of salary ranges provided the applicant with reasonable access to information to meet public interest while maintaining the privacy of its employees. It said that the protection of an individual's privacy takes precedence over provincial and federal access to information rights set out in legislation. These arguments are not supported by the legislation or case law.

Analysis

Step 1: Is the requested information "personal information" within 461(f)? If not, that is the end. Otherwise, I must go on.

[12] Yes. The information requested is the names and salaries of the Municipality's employees. It is personal information.

Step 2: Are any of the conditions of 480(4) satisfied? If so, that is the end. Otherwise, I must go on.

[13] Yes. s. 480(4)(e) of the *MGA* is satisfied. Section 480(4)(e) states:

480(4) A disclosure of personal information is **not** an unreasonable invasion of a third party's personal privacy if

³ I was unable to find the link to this specific article, but the applicant provided me with a physical copy of it. The article is titled "CAOs discuss salaries" and is dated September 2, 2016.

⁴ At the time of the access to information request, the name of the Strait Regional Centre for Education was the Strait Regional School Board.

⁵ The Strait Regional Centre for Education published employee salaries in *Schedule of salaries and expenses, Strait Regional School Board, March 31, 2017* here: <https://notices.novascotia.ca/files/pscd/2016-2017/rsb-srsb-pscd-2017.pdf>.

⁶ This information can be found in the Supplementary Information files listed each year on the Public Accounts webpage: <https://beta.novascotia.ca/public-accounts>.

⁷ Dated November 27, 2017.

⁸ Dated December 28, 2017.

...

(e) the information is about the third party's position, functions or **remuneration** as an officer, employee or member of a municipality; (emphasis added)

[14] In this case, we reach the end at step two of the test. As set out clearly in s. 480(4)(e), remuneration (salary information) is not exempt from disclosure as an unreasonable invasion of privacy under the *MGA*.

[15] In addition to the clear statutory authority, it has long been settled by the Nova Scotia Supreme Court,⁹ previous review reports out of this office¹⁰ and other reviews from Information and Privacy Commissioners across Canada that¹¹ s. 480(4)(e) displaces the exemption in s. 480(1). In other words, the salary information of a municipal employee cannot be withheld under s. 480 and must be released.

[16] At the time this file was assigned to an investigator at the Office of the Information and Privacy Commissioner (OIPC), the Municipality wrote to the OIPC and stated, "At this time it is highly unlikely the Municipal decision will change regardless of the outcome of the review by OPIC (sic)." I am hopeful that this comment does not fully represent the position of the Municipality. I am also hopeful that it does not reflect the ordinary operation of the Municipality under *Part XX* of the *MGA*. On the other hand, if that is how, in fact, the Municipality operates in relation to its responsibility to make a decision in response to my findings and recommendations, this causes me serious concern. That any municipality in Nova Scotia would be emboldened to put in writing a blatant intention to disregard this quasi-judicial administrative review process is extremely troubling. It also provides a tangible example of why amendments to *Part XX* of the *MGA* and its related Acts are so direly needed. It is for this reason that this review report will be provided to the Minister of Justice with a request that he put forward a comprehensive bill to amend *Part XX* of the *MGA* and its related Acts to include a provision to give the Information and Privacy Commissioner order-making power.

FINDING & RECOMMENDATION:

[17] I find that:

1. Disclosure of the withheld personal information would not result in an unreasonable invasion of a third party's personal privacy.

⁹ *Dickie v. Nova Scotia (Department of Health)*, [1998 CanLII 1526 \(NS SC\)](#).

¹⁰ *NS Review Report FI-08-44, Nova Scotia (Legal Aid Commission) (Re)*, [2009 CanLII 14756 \(NS FOIPOP\)](#); *NS Review Report FI-00-98, Environmental Clean-up of the Muggah Creek Watershed (Re)*, [2000 CanLII 9795 \(NS FOIPOP\)](#).

¹¹ See for example *ON Order PO-2435, Ontario (Health and Long-Term Care) (Re)*, [2005 CanLII 56347 \(ON IPC\)](#); *AB Order F2009-046, Calgary (Re)*, [2010 CanLII 98644 \(AB OIPC\)](#); and *NL Report A-2016-013, Western Health (Re)*, [2016 CanLII 40524 \(NL IPC\)](#).

[18] I recommend that:

1. The Municipality disclose the information withheld under s. 480 of the *MGA* within 45 days of the date of this review report.

February 15, 2022

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia